L.J. said "When a document containing contractual terms is signed, then, in the absence of fraud, or, I will add, misrepresentation, the party signing it is bound, and it is wholly immaterial whether he has read the document or not."

In the present case there is no allegation of fraud but had there been innocent misrepresentation as the agreement had not been explained to the respondents? I do not think so. In *Curtis v. Chemical Cleaning & Dyeing Co. Ltd.* (3) the facts were briefly these: When the plaintiff took a white satin dress to the defendants' shop, dyers and cleaners, to be cleaned she was given a document headed "Receipt" and was asked by the shop assistant to sign it. The plaintiff enquired why her signature was required and she was told by the shop assistant that the defendants would not accept liability for damage done to beads and sequins on the dress. The plaintiff then signed the document without having read all of it. In fact the "Receipt" contained a condition that the cleaners accepted no liability for any damage however arising. When the dress was returned to the plaintiff it was found to be stained and she was awarded damages by the County Court Judge. On appeal it was held that the plaintiff had been induced to sign the document by an innocent misrepresentation as to the extent of the exception clause, the exception never became part of the contract between the parties and therefore the defendants were liable to the plaintiff. Mr. Tan relies on that part of the judgment of Denning L.J. in the *Curtis case* where the learned Judge said that a false impression might even be conveyed by simply handing the document to the customer as if it was a receipt or by asking her to sign it without drawing attention to the condition. It must be remembered that in the *Curtis case* the clause in the "Receipt" exempted the defendants from their common law liabilities. There are no common law liabilities involved in our present case and I do not think that it was necessary for the appellants to draw the attention of the respondent to the terms of the agreement. I do not, therefore, agree with Mr. Tan's submission that there had been an innocent misrepresentation and as the respondent had signed the agreement knowing full well that it was a contract for the building of the house the respondent cannot be heard to say that she did not know the terms of the agreement and in my opinion the money was paid by the respondent under the belief that it was due under the agreement and it was therefore paid under a mistake of law.

Mr. Tan urges that even if the money was paid under a mistake of law it would be inequitable to allow the appellants to retain the money. I do not think however that in this case it would be inequitable to allow the appellants to retain the money. It cannot be said that the appellants have taken advantage of the respondent's ignorance.

For these reasons the appeal is allowed. There will be no order as to costs. The deposit of $500 is to be paid out to the appellants or their solicitors.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Oehlers & Choa.*

A.V. TUCKER v. ANG OON HUE

[O.C.J. (Buttrose J.) October 10, 1957]

[Singapore — Suit No. 690 of 1956]

Negligence — Allurement — Lime left by Contractor on unmade road or thoroughfare used by pedestrians and also by children as a play ground — Contractor not in occupation of land — Child injured by lime — Duty of contractor to child.

The defendant was a building contractor engaged in the construction of a number of houses in Brighton Crescent, Singapore. While so engaged he or his sub-contractor, Ong Ah Sai, left a considerable quantity of lime for the purpose of lime washing and painting houses on an open space which comprised portion of an unmade road or thoroughfare adjoining the houses which were nearing completion. The evidence showed that the place where lime was deposited was freely and frequently used by members of the public and that a number of children were in the habit of playing all over this area. The defendant took no steps to prevent injury to children occurring while work was not going on at the site.

The plaintiff, a boy aged five years, while on the outside of the gate of his house saw two children playing at the lime dump. They were apparently picking up handfuls of lime from the boxes and throwing it from the wooden frames on which they were standing on the ground below and they were still doing so when the plaintiff arrived on the scene. The plaintiff walked up to see what the boys were doing and received a handful of lime in his right eye which had been dropped by one of them. As a result of the injury caused by the lime burn the plaintiff lost the sight of his right eye.

In an action for an injury to the plaintiff caused by the negligence of the defendant.

Held: (1) the defendant was negligent in that he failed to take reasonable care in the circumstances to avoid acts or omissions which could reasonable be fore-

seen to be likely to lead to such an injury as which had occurred to the plaintiff;

(2) Ong Ah Sai, was the servant or agent of the defendant who was therefore responsible for his acts;

(3) the plaintiff was entitled to damages.

[**Editorial Note**: See *Prince v. Gregory* (1959) 1 W.L.R. 177; (1959) 1 All E.R. 133, C.A.]

Cases referred to:—

(1) *Bolton v. Stone* (1951) A.C. 850 at 858.

(2) *Latham v. Johnson & Nephew Ltd.*, (1913) 1 K.B. 398.

(3) *Phipps v. Rochester Corporation*, (1955) 1 Q.B. 450.

(4) *Creed v. John McGeoch & Sons Ltd.*, (1955) 3 All E.R. 123.

(5) *Read v. Lyons & Co. Ltd.*, (1947) A.C. 156.

(6) *Glasgow Corporation v. Taylor*, (1922) 1 A.C. 44.

(7) *Paris v. Stepney Borough Council*, (1951) A.C. 367.

(8) *Mahon v. Osborne*, (1939) 2 K.B. 14.

(9) *Performing Right Society, Ltd. v. Mitchell & Booker (Palais de Danse) Ltd.*, (1924) 1 K.B. 762, 765.

ACTION FOR DAMAGES.

J. D. Donnelly for the plaintiff.

G. J. O'Kell for the defendant.

Buttrose J.: This is an action by the plaintiff, an infant, suing by his next friend, against the defendant for damages for injury to the plaintiff caused by the negligence of the defendant.

On the 23rd of January, 1956, the date when the accident happened, the plaintiff had just attained the age of five years. The defendant is a building contractor and on and prior to the date in question was engaged in the construction of a number of houses in Brighton Crescent.

The land upon which Brighton Crescent now stands was bought some years before by the defendant in the name of his wife. The land was sub-divided into building lots and building operations were commenced and carried on over a period of some five to six years prior to this incident. The defendant was the contractor and his evidence was that he undertook the work of construction of these houses which was done partly by him and partly by sub-contractors.

A number of houses on the North side of Brighton Crescent had been completed by 1954 and one of them — No. 44 — on the corner of St. Helier's Avenue and Brighton Crescent was at the material time occupied by F/Lt. & Mrs. Tucker and their son who is the plaintiff in this action. The entrance to No. 44 oddly enough is not gained from Brighton Crescent but just round the corner in St. Helier's Avenue.

On the date in question a further twelve houses on the opposite side of Brighton Crescent were nearing completion and in connection with the painting and white-washing of these houses a considerable quantity of lime had been deposited outside No. 46 Brighton Crescent and immediately opposite the building sites in question as shewn in the photograph Ex. P 3(d). The lime had been placed there by Ong Ah Sai the sub-contractor employed by the defendant to do the lime washing and painting of these houses.

The reason advanced by Ong Ah Sai for placing the lime in that particular spot and not on the building site was that the ground there was clear and even, whereas on the building sites themselves there was a quantity of bricks, building materials and timber scattered about.

The photographs indicate the position of the lime and the building materials and wooden frames immediately adjacent to it at the material time and the photograph Exhibit P3 (e) is a close up of some of the wooden tube of lime delivered to Ong Ah Sai exposed and uncovered as they were at the date of the incident.

The accident to the plaintiff occurred sometime between 6.45 and 7 o'clock in the evening when neither the defendant nor his employees were working on the site. There was no evidence as to whether there was any watchman left on duty. It was not suggested that there was one.

The plaintiff had with his mother's consent gone outside the gate to look at the cars and buses passing further up the road. Not more than 3 or 4 minutes later as his mother was walking towards the gate to call him in for his bath screams were heard and she ran out and round the corner into Brighton Crescent followed by F/Lt. Tucker.

Now the evidence was that two children, Michael Wilson and Steve Morrison, sons of Air Force colleagues and neighbours of F/Lt. Tucker had been playing at this dump and with this lime shewn in the photographs since about 6 o'clock that evening. They were apparently picking up handfuls of lime from the boxes and throwing it from the wooden frames on which they were standing on to the ground below and they were still doing so when the plaintiff arrived on

the scene. While watching the traffic he had no doubt noticed the two boys playing on the dump and not unnaturally walked up to see what they were doing and received a handful of lime in his right eye which had been dropped by one of them. According to F/Lt. Tucker the right side of the plaintiff's face was covered with a white sticky substance and as he approached F/Lt. Tucker said he saw Steve Morrison running away while Michael Wilson was standing near Mrs. Tucker.

As the result of the injury caused by the lime burn the plaintiff has lost the sight of his right eye and an artificial one will have to be substituted.

On these facts three issues arise :

(1) Was it negligent to leave lime where it was in the circumstances?;

(2) If it was negligent was the defendant responsible?;

(3) If the answer to both these questions is in the affirmative to what damages is the plaintiff entitled?

Assuming for the moment that the defendant was responsible for placing the lime where it was, what was the degree of care which he must exercise to escape liability for anything which may occur as a result of it being so placed there in the circumstances.

The principles to be applied were referred to by Lord Porter in *Bolton v. Stone* [1] and it is unnecessary for me to re-state them.

The plaintiff must show that the defendant foresaw or ought reasonably to have foreseen the reasonable probability of danger arising from the placing of the lime where it was in the circumstances.

Now a child who sustains injury on the property of another will be either a trespasser, a licensee, or an invitee and the degree of care owed by the owner of the property where the child is injured will depend to which of these three legal categories the child belongs. The question of the degree of care required towards children is a most difficult one and as Lord Sumner then Hamilton L.J. said in the leading case of *Latham v. Johnson & Nephew Ltd.*, [2] "Children's cases are always troublesome. English law has been very ready to find remedies for their injuries." I am bound to say at once that I find the present case no exception.

It will be convenient I think to consider in the first place where this lime was in fact deposited. It was not placed on the building site which I think must be taken to mean the actual plots on which buildings were being erected and which were, so it would appear, owned by the defendant or rather the defendant's wife. It does not appear to have been placed on any land owned or occupied by the defendant, or at least there was no evidence that it was. There was no evidence as to who was the owner or occupier of this land. The lime was deposited on an open space opposite the building site and approximately in front of the entrance or gateway to No. 46 Brighton Crescent. This open space comprised portion of an unmade road or thoroughfare which lead out on to Serangoon Garden Way as shown in the photographs Exhibits P 3(a) and P 3(d) and was used by pedestrians, but not vehicles, to gain access thereto. It would appear to have been used as a public thoroughfare and when ultimately made up according to the Plan Exhibit P1 will be a continuation of Brighton Crescent leading out on to Serangoon Garden Way. It may be observed in passing that the defendant in his answers to the plaintiff's interrogatories refers to the place where the lime was deposited as 'the roadway'. But whether or not it had at the material time attained the status of a public high way in its strict sense I am satisfied on the evidence that it was freely and frequently used by members of the public to go to and from Serangoon Garden Way and was, in fact, the only means of access to Nos. 46 and 48 Brighton Crescent and to those houses nearing completion on the opposite side of the road. The evidence also, in my view, clearly established that a number of children were in the habit of playing all over this area (as shown in photograph Exhibit P 3(a) and in the immediate vicinity of this lime as well as over the building sites and that they did so unaccompanied may, in my opinion, reasonably and properly be inferred from the evidence. This is, in my view, a matter of considerable importance as if the defendant knew or ought reasonably to have anticipated that this was so, then so it seems to me he must take steps accordingly.

I am satisfied that these facts were well known to the defendant's employees and to the defendant and in fact to every-one in the neighbourhood. In this area to which the public had a free and unrestricted right of access and in which young children were known to play unaccompanied a quantity of lime in a number of wooden casks had been deposited open and exposed alongside a quantity of building material and wooden frames which had been stacked one on top of the other. Furthermore no steps appear to have been taken, according

to the evidence, either by the defendant or his employees to prevent the children from playing on the building sites or to keep them away from the dump of building materials and lime on the roadway either while the work was going on at the site or after it had finished for the day. There was, in my view, a reasonable probability that children would play on or with this pile of building material and lime after the workmen had gone and the area deserted which the defendant ought reasonably to have foreseen.

Now Mr. Frye the Chief Chemist Singapore described lime as an important industrial hazard and that while not to the same degree dangerous as petroleum it was nevertheless dangerous and he said he would call lime a dangerous substance in general terms. Physical contact with lime was dangerous but mere proximity was not. He further said that it was unlikely that any ill effects would result from the mere handling of lime with the bare hands provided they were thoroughly cleansed afterwards. There was also the evidence of Mr. Brundle who said that workmen were accustomed to handle it with their bare hands. The evidence of Ong Ah Sai was that some of his own workmen had complained about lime and that care must be exercised in its use and application. He said it was quite a common occurrence to get drops of lime in the eyes especially when whitewashing ceilings which caused a burning or smarting sensation bringing tears to the eyes thus cleansing them with no resulting injury.

There was also evidence that towards the end of October or the beginning of November 1955 a complaint has been made by Mrs. Wilson, who lived at No. 38 Brighton Crescent, that her younger son William received two distinct burn marks one on the eye lid and the other just below the eye while playing with some lime which had been deposited on the S.W. corner of the intersection of Brighton Crescent and St. Helier's Avenue. The complaint was made to a Mr. Ang who was not the defendant but was the person to whom all the residents in the area paid their rent and who worked in the office on the building site marked on the Plan Exhibit P 1. Mrs. Wilson said she told Mr. Ang to remove the lime as it was dangerous to young children and that her son had been playing with it and burnt himself. Nothing however was done about it and the lime remained where it was. Now the defendant was apparently not present when Mrs. Wilson made her complaint although the evidence was that he was seen in the office every day and resided in the neighbourhood at No. 506 St. Helier's Avenue but there is no evidence that it was ever actually brought to his notice. The defendant however as a building contractor must, I think, be taken to be fully aware of the caustic properties of lime and their effect. There was evidence that Mr. Tucker had also complained to Mr. Ang about the dump of building materials stacked up on the roadway although at the time of the incident he was unaware of the presence of any lime.

It is noteworthy that Hamilton L.J. in *Latham v. Johnson & Nephew Ltd.*, [2] in referring to the obligation of a person who leaves about, in a place known to be frequented by children, objects in themselves capable of causing injury, if meddled with and which children are likely to meddle with said that "loaded guns and heaps of lime left in playgrounds are almost a class by themselves."

Considerable reliance was placed by Counsel for the defendant on the recent case of *Phipps v. Rochester Corporation* [3] in which Devlin J., has made an exhaustive review of the cases dealing with the duty of licensors towards children in general.

The facts in that case were that the defendant corporation were developing a housing estate and on the land which was unbuilt upon they had dug a long and deep trench. The infant plaintiff a little boy of five years, accompanied by his seven-year old sister, were crossing the land on their way to pick some blackberries when they found the trench across their route. They were, in fact near one end of it, and the little girl saw it and turned to go round the end, but the little boy who was following behind her fell in and broke his leg. The houses on the estate which were already completed and occupied had their own gardens where small children could play. Although the corporation knew that children from these houses were resorting to the open space where the trench was, they did not prevent the children doing so, and took no steps to show that they objected to the children going there.

Devlin J., held on the facts that children as a class were licensed to play on the open space, that the trench was neither an allurement to a child nor a danger concealed from an adult or a big child, but that it was a danger imperceptible by a little child of the plaintiff's age because he was not old enough to see the necessity of avoiding it or of taking special care; and that

there was no evidence to show that little children frequently went unaccompanied on to the open space in a way which ought to have brought home to the corporation that that was the use which was being made of the licence. Although the infant plaintiff was on the land as a licensee it was held that the defendants were not in breach of their duty towards him.

In my opinion that case is distinguishable from the present.

In the case before me the boxes containing slaked lime did, in my view, constitute an allurement in much the same way as would boxes of sand in similar circumstances. They would be attractive to children and in addition dangerous as a plaything. Furthermore it was a danger that a small child would neither appreciate nor consider it necessary to avoid or take special care. There was, as I have already indicated, evidence to show that unaccompanied children were in the habit of playing in the vicinity of these boxes of lime which ought to have brought home to the defendant the use which was being made of the area and the reasonable probability of their playing with the lime.

In *Creed v. John McGeoch & Sons Ltd.*,[4] the defendants who were contractors were engaged in the execution of a contract for the construction of roads and sewers and the levelling of land. While so engaged they left a trailer on land adjoining the road in course of construction. The plaintiff, a girl aged five years, while walking with some other young children on the road saw the trailer played with it and as a result she was injured. In an action for injury to the plaintiff caused by the negligence of the defendants it was held that the plaintiff was entitled to damages. The defendants in that case were not in occupation of the land on which the trailer stood and had left the trailer which was dangerous and attractive to children in a place where children were known to play.

The defendant in his answers to the plaintiff's interrogatories admitted that it was not necessary for the execution of the work, that the materials (i.e. the lime) used therefore should be deposited in the roadway. There was evidence that prior to this incident Ong Ah Sai had deposited lime at the rear of these houses nearing completion.

In the light of all these circumstances what is the degree of care to be exercised. According to Lord MacMillan in *Read v. Lyons & Co. Ltd.*,[5] the sound view is that the law in all cases exacts a degree of care commensurate with the risk created. The measure of care to be exercised must also as indicated in *Glasgow Corporation v. Taylor* [6] be appropriate to the ability of those whose presence ought to be anticipated.

These boxes of lime were dangerous and attractive to children and were stacked or deposited in a place to which the public had a free and unrestricted right of access and where children were known to resort and play.

On the assumption that the defendant was responsible for placing the lime there, he was in my opinion negligent in that he failed to take reasonable care in the circumstances to avoid acts or omissions which could reasonably be foreseen to be likely to lead to such an injury as that which had occurred to the plaintiff.

It was however submitted on behalf of the defendant that even if a *prima facie* case of negligence was made out, if it could be shown by the defendant that he was following the usual practice of persons in his position in the circumstances then that would be sufficient to exonerate him.

Paris v. Stepney Borough Council [7] and *Mahon v. Osborne* [8] were cited in support of this proposition.

It was contended that the evidence established that it was the usual practice to leave lime lying about in boxes exposed and uncovered in the place, in the manner and in the circumstances in which it was in this case.

It is true that Ong Ah Sai said that he was in the habit of leaving quantities of lime about in a public place where children played without fencing it in or taking any precautions with regard to it. The impression, not altogether favourable, which I formed of Ong Ah Sai was that he was quite unconcerned and indifferent as to where he placed the lime and he was quite prepared to leave it anywhere, which happened to suit him at the moment. Even after the injury to the plaintiff occurred neither he nor the defendant made any attempt to remove the lime although according to Ong Ah Sai he knew that children were still playing about the area but it remained where it was until sometime in March or April, 1956. Mr. Brundle, a chartered architect who was called by the defendant gave evidence to the effect that it was usual to see these boxes of lime open and exposed on a building site as shown in Exhibit P3 (e). He couldn't recollect ever seeing covers over lime or special fencing round it and he said he had

often seen scenes similar to that shown in photograph P3 (d) on building sites.

I accept his evidence and I think the usual practice is for lime to be deposited on a building site open and uncovered in boxes. But the evidence here is that this lime was placed not on a building site but on what the defendant himself described as a roadway which was freely used by members of the public and frequented by children who went there to play. It was not even necessary for the execution of the work that it should be placed there.

The evidence in my view falls far short of establishing any such practice or custom.

I turn now to deal with the second issue namely whether the defendant was responsible for this negligence. If Ong Ah Sai was the servant of the defendant then clearly the defendant is liable. As was pointed out by MacCardie J., in *Performing Right Society, Ltd. v. Mitchell & Booker (Palais de Danse) Ltd.* (9) the question whether a man be a servant or an independent contractor is often a mixed question of fact and law. If however the relationship rests on a written agreement only the question is primarily one of law. The contract is to be construed in the light of the relevant circumstances.

The written agreement in the present case has all the appearance of a home made one. It consists, in effect of a bare statement that Ong Ah Sai is to do the contract work for the defendant of painting and whitewashing the houses in question and that the contract price inclusive of labour and materials should be $380 for each house.

The principles to be applied in determining the question of whether a person is a servant or an independent contractor were enunciated in *Performing Right Society Limited v. Mitchell & Booker Ltd.*, (9) and it is unnecessary for me to restate them. The difficulty I find in the present case is in applying these principles to the facts.

The agreement unfortunately is not very helpful and standing alone on the face of it would appear to indicate the position of Ong Ah Sai as that of an independent contractor but considered in the light of the evidence of the defendant and Ong Ah Sai together with all the surrounding circumstances the matter becomes more complicated.

The defendant's evidence was that Ong Ah Sai was to do the work according to the contract and to the defendant's satisfaction. The defendant said that he told Ong Ah Sai what to do and that he was bound to do what the defendant told him. Ong Ah Sai, he said, was working under his directions and that he told him when to start and he would have to stop at any time the defendant wished him to. The defendant would in such circumstances have to pay him accordingly in pursuance of the terms of the contract.

The defendant said he had the means to direct how the work was to be carried out and that Ong Ah Sai was bound to obey his orders in connection therewith.

Ong Ah Sai's evidence was that so far as his work was concerned he had to work subject to the defendant's orders and that he was bound to obey the defendant's orders in connection with the work. If the defendant had told him to remove the lime or barricade it off he would have had to do so. Ong Ah Sai said he worked the normal hours from 8 a.m. until 5 p.m.

The defendant's evidence was that while Ong Ah Sai was carrying out his work of painting and white-washing he would sometimes go every day to the site and sometimes at intervals of a few days. Ong Ah Sai on the other hand seemed anxious to give the impression that the defendant rarely came on the site except to pay him which, it is to be noted, was every fortnight.

The evidence was that the defendant had never previously employed Ong Ah Sai as a subcontractor which might account for the defendant visiting the site almost daily while the work of whitewashing and painting was in progress. It could I think be said with equal force to afford a reason for the defendant desiring to control how the work should be carried out. The defendant was also the agent for the owner — his wife — as well as the building contractor and, not unnaturally, would, desire to keep the detailed control of operations in his own hands. The difficulty of decision in these cases is shown by the following passage from Smith's Master and Servant 7th Ed. 288 referred to by McCardie J. in *Performing Right Society v. Mitchell & Booker Ltd.* (9) "The employer (i.e. of an independent contractor) may nevertheless reserve to himself by contract general rights of watching the progress of the works which the contractor has agreed to carry out for him, of deciding as to the quality of materials and workmanship, of stopping the works or any part thereof at any stage, and modifying and altering them, and of dismissing disobedient or incompetent workmen employed

by the contractor, and yet he will not thereby of necessity render himself liable to third persons for the negligence of the contractor in carrying out the works." Taking all the various factors and circumstances into consideration together with the evidence of the defendant and Ong Ah Sai I think that the defendant was entitled to give the orders as to how the work should be done and to exercise a substantial degree of detailed control over Ong Ah Sai in its performance.

I have therefore, after experiencing considerable difficulty, arrived at the conclusion that Ong Ah Sai was the servant or agent of the defendant who was therefore responsible for his acts.

It was also contended on behalf of the plaintiff as I understood it:—

(1) that the defendant was a trespasser on the highway in that he created an obstruction by hindering the free passage of the public along the roadway which constituted an improper use thereof. In other words that the placing of the lime on the roadway was an unlawful and wrongful act; and

(2) that even if Ong Ah Sai was an independent contractor the defendant was still liable for his misdeeds because he was engaged in a hazardous operation.

In view of the conclusions at which I have arrived it is unnecessary for me to express any opinion on these matters and I refrain from doing so.

The remaining issue for decision is as to the amount of damages to which the plaintiff is entitled. As a result of the accident the plaintiff has completely lost the sight of his right eye and an artificial one will have to be substituted. His left eye very fortunately was quite uninjured and is normal. At the time of receiving the injury the medical evidence was that he would have suffered very severe pain for about a week but thereafter the pain would recede and after a further two weeks would cease altogether. Three operations were performed in all — the final one on the 9th of August, 1957, by Dr. Milne whose evidence was that nothing further could be done except to remove the eye which is now blind and unsightly and fit an artificial one. Dr. Milne recommended that this should be done at Moorfield Hospital and that two or three operations may be required as a result of which the plaintiff may suffer some pain which would last about two weeks after each operation. With only one eye the plaintiff would not be accepted into any of the armed services and he has undoubtedly suffered a very severe handicap.

Taking all these various factors into consideration I assess the general damages to which, in my view, the plaintiff is entitled at the sum of $17,000.00 which together with special damages which have been agreed at $250 makes a total of $17,250.00.

There will be judgment therefore for the plaintiff for $17,250.00 and costs.

Order accordingly.

Solicitors: *Battenberg & Talma; Braddell Bros.*

GOH LENG SAI v. REG.

[A.Cr.J. (Ambrose J.) September 13, 1958]

[Singapore — Magistrate's Appeal No. 171 of 1957]

Prevention of Corruption Ordinance (Cap. 121), ss. 3(b), 4 and 5 — Onus of proof — Evidence Ordinance (Cap. 4), ss. 64 and 92 — Sentence — Recovery of secret gift.

Evidence — Contract — Proof of contract distinguished from proof of terms of contract.

The appellant in this case was convicted and sentenced to six months' imprisonment on the following charge: "..... that you on or about the 16th day of February, 1957 at about 8.00 p.m. at Singapore, having a contract with the Singapore City Council, did corruptly give to an agent, namely, G. M. Richards, the acting Chief Engineer (Construction) of the Sewerage Department, of the City Council, the sum of one thousand dollars as an inducement or reward for showing favour to yourself in relation to his principal's affairs, and thereby committed an offence under section 3(b) and punishable under section 4 of the Prevention of Corruption Ordinance (Cap. 121)."

On appeal it was contended for the appellant that (i) there was insufficient evidence that the appellant had a contract with the City Council, the only evidence adduced by the prosecution being oral evidence; (ii) G. M. Richards was not in a position to show favour on the date in question; (iii) the evidence for the prosecution showed that the money was not given as an inducement or reward for showing favour as Richards was never asked to show any favour; and (iv) the District Judge did not consider the possibility that Richards was an accomplice.

Held: (1) the existence of a contract or contractual relationship may be proved by oral evidence. Proof of the existence of a contract must be distinguished from proof of the terms of a contract. Section 92 of the Evidence Ordinance does not apply to proof of the existence of a contract. Section 64 of the Evidence Ordinance requires the production of a document only if it is desired to prove the contents of the document;

(2) there was no onus on the prosecution to prove that Richards was in a position to show favour at the time the appellant gave him the money. It was sufficient to show that Richards was an agent of a public body as defined in section 2 of the Prevention of Corruption Ordinance;